IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 718 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

KISHORKUMAR BHIKHUBHAI &2 - Respondent(s)

==========

Appearance :

MR. K.C. SHAH, LD. APP forPetitioner

MS. N.N. SHAIKH for MS SUDHA R GANGWARfor Respondent No(s).: 1,2.

==========

CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 22/06/2005

ORAL JUDGMENT

1.The State of Gujarat has preferred this Criminal Appeal under section 378 of the Code of Criminal Procedure, 1974, challenging the judgment &order dated 25-6-1991 passed by learned JMFC, Gondal in Criminal Case No. 725 of 1988 acquitting both the respondents (original accused) of the offence under section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'Act'). Leave for appeal came to be granted and the appeal was admitted (Coram: K.J. Vaidya, J) vide order dated 7-4-1992.

1.The closing purshish came to be filed at exhibit-39 on behalf of the defence and at exhibit-40 the prosecution has also filed closing purshish.

2.The learned Magistrate has concentrated only on the aspect of consent and the issues in respect of adulteration of sample food article has not been dealt with at all. The learned Magistrate has recorded the contention on behalf of the accused that as the consent at exhibit-29 is bereft of any reason and as the consent at exhibit-29 does not contain the section number and the provision under which the offence is alleged to have been committed, and as it does not disclose that it was being given in public interest, the sanction was invalid and therefore the prosecution case stands vitiated. The learned Magistrate has accepted this contention relying upon the decision of this Court rendered in case of RAMANBHAI SHIVABHAI PRAJAPATI Vs. THE STATE OF GUJARAT, 1990 Cr.L.R. (Guj) pg. 496. The equivalent of the same is 1990 (2) GLH, pg. 576. Relying upon the observations made in para-17 of the judgment it was contended on behalf of the accused that, as the sanction is not mentioning that it was being issued in public interest and as no elaborate reason is recorded, the sanction at exhibit-29 was without application of mind and vitiate the case of lodging the prosecution. It is important to note that the learned

Magistrate has addressed himself only to this question and no other question of sanction at exhibit-29 under section 20 of the Act, though the issue was framed about the sample of food being adulterated or not, no submission of defence are on record.

1. It is important to note that the learned Magistrate has not addressed himself as to whether the sample of food article was adulterated or not. This Court is of the opinion that, it would be in the interest of justice that the mater be remanded to the trial court for deciding the issue. The trial court is hereby directed to decide the matter on the basis of the evidence already on record and come to the conclusion on the submissions advanced before him on the basis that the consent at exhibit-29 was validly recorded.

[S.R. BRAHMBHATT,J]

/vgn